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In re Application of
WAGNER et al.
Application No.: 10/089,519
PCT No.: PCT/EP00/09447
Int. Filing Date: 27 September 2000
Priority Date: 01 October 1999
Attorney Docket No.: 1860/50907
For: DYNAMIC MIXER

Reg. Recours. Pet. 1.181
Due 10/12/02

DECISION ON

PETITION UNDER

37 CFR 1.181

This decision is in response to the "Response to Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)" filed via facsimile transmission on 09 July 2002, which has been treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 27 September 2000, applicants filed international application PCT/EP00/09447, which claimed a priority date of 01 October 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 12 April 2001. A Demand for international preliminary examination in which the United States was elected, was filed on 01 February 2001, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 01 April 2002.

On 29 March 2002, applicants filed a Transmittal Letter (Form PTO-1390) for entry into the national stage under 35 U.S.C. 371 accompanied by, *inter alia*, a translation of the international application, and the U.S. Basic National Fee.

On 27 June 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for providing the oath or declaration later than thirty months from the priority date were required. The NOTIFICATION OF MISSING REQUIREMENTS set a two-month extendable time period.

On 09 July 2002, applicants submitted the instant "Response to Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)", which was accompanied by, *inter alia*, a date-stamped postcard receipt, a copy of an application data sheet and a copy of a declaration of the inventors.

DISCUSSION

A review of the application file reveals that a declaration filed on 29 March 2002 is not located therein.

The postcard receipt submitted by applicants is not sufficient to establish that on 29 March 2002 the United States Designated/Elected Office (DO/EO/US) received a declaration of the inventors. On the copy of the postcard receipt, the copy quality is such that a substantial portion of the right of the postcard is darkened enough such that any text in that area is illegible and any possible annotation that might be in that area could be obscured. Also, the postcard receipt contains what appears to be a person's initials and a date. This notation has not been explained.

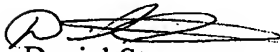
Additionally, it is not clear that applicant has provided a true copy of the declaration filed 29 March 2002. The petition states that "[e]nclosed with this response is a copy of the application data sheet and the executed Declaration that was filed on March 29, 2002." However, the copy of the application data sheet accompanying the petition is different than the application data sheet filed 29 March 2002 that is located in the file. For example, in the copy of the application data sheet accompanying the petition, the PCT application is listed under "PRIOR FOREIGN APPLICATIONS" while in the application data sheet filed 29 March 2002 that is located in the file, the PCT application is not listed under this heading. Thus, the statement in the petition that the copy of the application data sheet and the copy of the declaration accompanying the petition are copies of what was submitted on 29 March 2002 cannot be relied upon. Accordingly, it is not clear that the copy of declaration of inventors filed with the petition is a true copy of what was filed 29 March 2002.

DECISION

The petition under 37 CFR 1.181 is **DISMISSED** for the reasons set forth above.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the Office of PCT Legal Administration.


Daniel Stemmer
Legal Examiner
PCT Legal Affairs

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